

C.M.A.(MD)No.522 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 05.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.522 of 2019

and

C.M.P.(MD)No.6192 of 2019

1. K.Vijaya Ratha

2. Vijayakumar

... Appellants

Vs.

P.Balasubramanian

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 r/w. 100 of Code of Civil Procedure , to set aside the fair and decreetal order passed in I.A.No.124 of 2018 in A.S.No.30 of 2016 on the file of IV Additional District Judge, Tirunelveli dated 28.11.2018 and allow the Civil Miscellaneous Appeal.

For Appellants : Mr.T.Selvan

For Respondent : No appearance



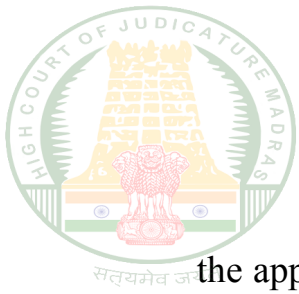
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JUDGMENT

The CMA is filed challenging the order passed by the IV Additional District Judge, Tirunelveli in I.A.No.124 of 2018 in A.S.No.30 of 2016 dated 28.11.2020.

2. I.A.No.124 of 2018 was filed to restore the appeal in A.S.No.30 of 2016 which was dismissed for default on 10.04.2018. The learned Trial Court dismissed the said petition on the ground that the said petition was filed by a single petitioner, though the first petitioner had been a women and that she was not well on that particular date of hearing and that her husband was out of station. The second petitioner being a male could very well have contacted the Advocate and instructed him to argue the case. Having not taken any steps to instruct the Advocate in representing the case, the learned Trial Court came to the conclusion that I.A.No.124 of 2018, seeking to restore A.S.No.30 of 2016 was filed only with the intention to delay the execution of money decree. Hence, having not being satisfied with the reasons given in the affidavit by the petitioners to restore



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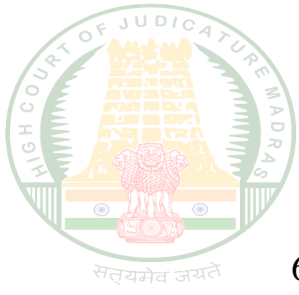
the appeal and recording that the reasons given were not bonafide, the said

I.A was dismissed by the trial Court.

3. The learned Counsel appearing for the petitioners submitted that it is all the matter of arguing the appeal and a chance should be given for arguing the matter. That apart, he pointed out that the day the case was posted for arguments I.e.,on 10.04.2018, was an Advocate boycott day.

4. Despite the name of the respondent being printed, no one appeared.

5. For the mistake of the Advocate, the client should not suffer. Hence, this Court is setting aside the order passed in I.A.No.124 of 2018 in A.S.No.30 of 2016 and the same shall be restored. The IV Additional District Judge, Tirunelveli, is directed to dispose of the same within a period of one month therefrom.



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6. With the above said direction, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

05.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To

1. The IV Additional District Judge, Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

jbr

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